



Ted Fitzgerald
<TFitzgerald@tu.org>

10/04/2004 10:59 AM

To: Peter Stevenson/EPR/R8/USEPA/US@EPA
cc:
Subject: AFC - Pacific Mine Removal

Pete,

Carol forwarded your message saying that you had not gotten any negative feedback from your managers about taking on the rigors of working on the Pacific Mine project in American Fork Canyon and that we should "count you in". I cannot tell you how much that pleases me. I look forward to resuming our relationship in dealing with the challenges in AFC. When you get back to the canyon you will see that a great number of those challenges no longer exist. We were able to complete a removal action that dealt with the problematic sites in AFC on NFS lands pretty much just the way you initially laid out that project.

Now Trout Unlimited is trying to complete the work at Pacific Mine and potentially have another followup project in Mary Ellen Gulch. Up to this point my primary contact with EPA for the TU proposals has been Carol Russell with Andy Lensink as counsel. It appears that we will be using an Administrative Order on Consent as the enabling authorization to proceed at Pacific. Andy is still working on a response to a letter that I sent to Carol on June 23 expressing concerns about future liabilities and requesting advice on how we could proceed with the work in AFC without incurring future liability. Hopefully that response will be forthcoming even this week. You may want to talk to him about this project.

There is too much water under the bridge for me to lay it all out for you in this message. That will have to occur over time when we have the opportunity to talk. I left you a voice mail a few minutes ago and hope to talk to you soon.

In my estimation, the first order of business for us is to get you back on the ground and bring you up to speed on just exactly what it is TU is trying to accomplish. I really want to make that happen in October if possible before we get wintered out - so the sooner the better. This field trip should be invaluable as we negotiate the terms of the Consent Order. I will accommodate whatever your schedule will allow. Just let me know. I will try to have some other people there as well because there are other players that need to stay abreast of what is going on but you are the key person for this field review. So whatever you can do will be what we do, regardless of who else can or cannot be there.

Again I am most pleased that you are returning to AFC and look forward to seeing you again very soon.

Ted



Carol Russell

10/04/2004 11:39 AM

To: Peter Stevenson/EPR/R8/USEPA/US@EPA

CC:

Subject: Fw: Followup Contact

Carol Russell
EPA Mining Team
999 18th Street ste. 300
Denver, CO 80202-2466
303.312.6310
fax 303.312.6897
russell.carol@epa.gov

----- Forwarded by Carol Russell/EPR/R8/USEPA/US on 10/04/2004 11:30 AM -----



Ted Fitzgerald
<TFitzgerald@tu.org>

10/04/2004 10:12 AM

Andy Lensink/ENF/R8/USEPA/US@EPA, Leon Szeptycki
To <LSzeptycki@tu.org>, mkbanks@stoel.com, Carol
Russell/EPR/R8/USEPA/US@EPA, jbaker@snowbird.com
cc Laura Hewitt <LHewitt@tu.org>, Kira Finkler
<KFinkler@tu.org>

Subject RE: Followup Contact

Andy,

As I expect Mr. Banks told you, I too had a conversation with him after his return from Europe. I explained to him that it looked like TU (principally my opinion) would recommend utilizing an Administrative Order on Consent rather than Utah's Voluntary Cleanup Program. The reason the Order appears more attractive is it provides broader liability relief than does the VCP. Mr. Banks expressed his reservations about entering into a Consent Order because of the "heavy obligation" it places on the party consenting to the order. TU is very conscious and conservative about taking any action that would potentially place our organization, or any of our participants, in a position of future liability beyond that which we would be exposed to during the implementation of the Removal Action. It is our intent to measurably reduce the land owners potential liability at Pacific Mine by reducing the potential for a release from the site by removing the toxic materials from exposure to the elements thus improving the quality of the adjacent environment. Although we have been counseled that it is highly unlikely TU would ever be pressed by EPA for additional action in AFC if we did successfully complete an action through the VCP, under our understanding of CERCLA that could potentially occur. Our management is reluctant to allow the organization to become subject to such. Without the MOU between EPA and Utah tying EPA to agreements made by Utah and restoration proponents, the VCP loses much of its attractiveness regardless of how slim the potential future liability threat might be. These concerns were the reason TU inquired of EPA regarding opportunities under the regulations to undertake the proposed action(s) in AFC with safeguards from future liability. Your response to that inquiry is critical to enabling TU to determine what course of action will be preferable, even feasible, for us to pursue.

From the discussions I have had with my superiors in TU, Carol Russell, Andy Lensink, Marty Banks, and many others, I have come to visualize the following scenario playing out in AFC (subject of course to EPA's pending response to our liability inquiry).

1- TU would negotiate a Consent Order with EPA following the model currently preferred by EPA. However as I explained previously, that order would have to include a clause that would provide TU an opportunity to "take No Action" if we are not successful in raising the funds necessary to implement the proposed

action. TU may be the only party signing the Order with EPA, thereby not exposing our benefactors to the rigors of CERCLA.

2- TU has been granted permission from Snowbird, acting for the land owner at Pacific Mine - Mr. Bass, to take the lead in preparing and implementing a removal action at that site. (Note the MOU that I sent to you last week.) If needed, TU can exercise this Removal Action as sole signatory to further enabling documents and instruments once satisfying the land owner of the adequacy of the proposed Action. There appeared to be advantages to the land owner as a signatory on a VCP. That does not appear to be the case with a Consent Order.

3- TU will complete a contract package, and other documents, that fully satisfy the terms of the Consent Order that we arrive at with EPA. EPA would review and approve the contract package and documents as being inclusive of all items needed to satisfy the Order.

4- TU would continue its efforts to obtain the funds necessary to implement the proposed removal action at Pacific Mine. With funds in hand, and a Consent Order and acceptable contract package in place, we would proceed with the next step.

5- TU would negotiate a contract price with Snowbird to implement the terms of the contract documents for the Removal Action at Pacific Mine. Snowbird would enter into a formal contract with TU and become TU's contractor. To the extent possible at the time of signing the contract, Snowbird would also provide some of the funding necessary for the work by reducing the value of the contract by the anticipated cost of using their equipment to do the work. (In the event that Snowbird's resources are not available in a timely manner, or it becomes necessary to sever Snowbird further from this action for their protection under the governing regulations, the contract could be with a separate qualified contractor. Hopefully neither of these alternative considerations will come into play.)

6- TU will perform contract administration as the Removal Action is implemented to ensure the terms of the contract and the Consent Order are substantially completed. EPA's OSC will be fully informed of all developments throughout the completion of the project and will personally engage in the project as deemed necessary to ensure EPA is in agreement the Removal Action is properly implemented and completed.

7- Upon completion of the Removal Action to the satisfaction of TU and EPA, the Consent Order is ratified as having been fully discharged and is finalized per the terms of the Order itself.

In this simplified overview, those seven steps result in the restoration of the waste rock piles and smelter site at Pacific Mine. We each recognize the efforts that have to occur to allow this to materialize but it appears it is doable, hopefully in time to allow the Removal Action to occur in 2005. In the event we find it necessary to turn away from the Consent Order scenario, the other options remain to proceed with a VCP action with the state, or waiting until an MOU between EPA and Utah is reached for the VCP and then proceeding with the project. Unfortunately there are no good projections of when such an MOU might be finalized.

If I have misrepresented any position, understandings, or authorities in this overview it was not intentional and resulted due to the uncertainty of the position TU has assumed in this, our first endeavor at becoming an active player in reclaiming and restoring abandoned hardrock mine sites in the western states. If any of those of you receiving this message find error or objection to what I have laid out here, please state those concerns. In my view, by working cooperatively within the scope and intent of the regulations we can successfully bring this proposed action to fruition to the satisfaction of all the parties involved. Pacific Mine constitutes one of the simplest remedies possible for completion of an AML site because of all the work that has already been accomplished by the Forest Service in AFC. Surely there is a means within the regulations to allow this work to be completed.

Ted

-----Original Message-----
From: Lensink.Andy@epamail.epa.gov
[mailto:Lensink.Andy@epamail.epa.gov]
Sent: Thu 9/30/2004 7:09 PM
To: Ted Fitzgerald
Cc:
Subject: RE: Followup Contact

Ted:

session
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couple
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I
model

Yes, I've been very busy this week. We have a big negotiation today and tomorrow on another case I'm working on, also involving facility in Utah. I did get a chance to talk with Marty Banks a of days ago. I got the feeling that Snowbird isn't quite this thing yet and is not yet sure what they want to do. I would to have a better feel for what they want before I send a letter. I sent Marty a copy of our standard administrative consent order. believe EPA would have to have something somewhat close to our agreement if we are to have a deal with Snowbird, since it is a legitimate responsible party.

I will give you a call early next week to discuss.

Andy Lensink

To
Lensink/ENF/R8/USEPA/US@EPA
cc
Subject

Ted Fitzgerald
<TFitzgerald@tu.
org>

09/30/2004 09:09
AM

Andy

RE: Followup Contact

on.
back to
you
this if

Andy,
I did not hear from you so I figure one of two things is going
First that you have been so busy you have not had time to get
this letter or second that the info I sent to you provided what
needed so you could finish your response to our letter.
But in either case, I am at work today, all day, and can discuss
need be at 801 465-9949.
Ted

-----Original Message-----
From: Lensink.Andy@epamail.epa.gov
[mailto:Lensink.Andy@epamail.epa.gov]
Sent: Mon 9/27/2004 12:16 PM
To: Ted Fitzgerald
Cc: Russell.Carol@epamail.epa.gov
Subject: RE: Followup Contact

entire
will

Ted:
Thanks very much. I am in phone conferences the
morning and do
not expect to be free until early this afternoon.. I
give you a
call then.
Andy Lensink